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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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12 RODOLFO MIGUEL RODRIGUEZ,

13 Petitioner,

14 v.

15 DAVE DAVEY, *Warden*,

16 Respondent.
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Case No. ED CV 15-0098 VBF (JCG)

**ORDER ACCEPTING REPORT AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE AND
DENYING CERTIFICATE OF
APPEALABILITY AND EVIDENTIARY
HEARING**

18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Petition, the Magistrate
19 Judge's Report and Recommendation, and the remaining record, and has made a *de*
20 *novo* determination. No objections to the Report and Recommendation have been
21 filed.

22 Accordingly, IT IS ORDERED THAT:

- 23 1. The Report and Recommendation is approved and accepted;
24 2. Judgment be entered denying the Petition and dismissing this action with
25 prejudice; and
26 3. The Clerk serve copies of this Order on the parties.

27 Additionally, for the reasons stated in the Report and Recommendation, the
28 Court finds that Petitioner has not made a substantial showing of the denial of a

1 constitutional right. *See* 28 U.S.C. § 2253; Fed. R. App. P. 22(b); *Miller-El v.*
2 *Cockrell*, 537 U.S. 322, 336 (2003). Thus, the Court declines to issue a certificate of
3 appealability.

4 Nor is Petitioner entitled to an evidentiary hearing. *See Cullen v. Pinholster*,
5 131 S. Ct. 1388, 1398 (2011) (AEDPA “requires an examination of the state court-
6 decision at the time it was made. It follows that the record under review is limited to
7 the record in existence at that same time *i.e.*, the record before the state court.”).

8
9 DATED: 11/02/2016

Valerie Baker Fairbank

HON. VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE